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RICHARD W. WIEKING
CLERK: U.S. DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

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1 VENABLE LLP
2 Douglas C. Emhoff (SBN 151049)
3 Tamany Vinson Bentz (SBN 258600)
4 Jennifer Levin (SBN 252420)
5 2049 Century Park East, Suite 2100
6 Los Angeles, CA 90067
7 Telephone: (310) 229-9900
8 Facsimile: (310) 229-9901
9 E-Mail: demhoff@venable.com
10 E-Mail: tjbentz@venable.com
11 E-Mail: jlevin@venable.com

E-filing

12 Attorneys for Defendant,
13 Wal-Mart Stores, Inc.

14 UNITED STATES DISTRICT COURT
15 NORTHERN DISTRICT OF CALIFORNIA

16 CV 11 1919

17 KIMBERLEY MAIN, an individual on
18 behalf of herself and all others similarly
19 situated,

CASE NO.

EMC

20 Plaintiff,

NOTICE OF REMOVAL OF
CIVIL ACTION

21 v.

22 WAL-MART STORES, INC., a Delaware
23 Corporation; and DOES 1 through 50,
24 inclusive,

[28 U.S.C. §§ 1332(d), 1441, 1446,
and 1453]

Complaint Filed: March 9, 2011

25 Defendants.

FILED BY FAX

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

1 TO THE UNITED STATES DISTRICT COURT FOR THE NORTHERN
2 DISTRICT OF CALIFORNIA AND TO THE PARTIES, BY AND THROUGH
3 THEIR ATTORNEYS OF RECORD:

4 Pursuant to the provisions of 28 U.S.C. §§ 1332(d), 1441, 1446, and 1453
5 Defendant Wal-Mart Stores, Inc. ("Wal-Mart") hereby removes the above-entitled
6 action from the Superior Court of the State of California, County of San Francisco,
7 to this Court. Removal of this action is proper for the following reasons:

8 1. Plaintiff Kimberley Main ("Plaintiff") filed a civil action in the
9 Superior Court of the State of California, County of San Francisco, against Wal-
10 Mart on or about March 9, 2011. Said action, entitled *Kimberley Main v. Wal-*
11 *Mart Stores, Inc., et al.*, Case No. CGC-11-509011 (the "Complaint"), alleged
12 violations of the Song-Beverly Credit Card Act of 1971, Cal. Civ. Code § 1747.08
13 ("§ 1747.08") and alleged claims of common law negligence, invasion of privacy,
14 and unlawful intrusion. A copy of the Complaint is attached hereto as Exhibit "A."
15 No other pleadings have been filed.

16 2. Wal-Mart was served with the Complaint on March 21, 2011.

17 3. This removal is timely under 28 U.S.C. § 1446(b) in that removal is
18 sought within 30 days after service of the summons and complaint.

19 JURISDICTION

20 4. The Class Action Fairness Act of 2005 ("CAFA") creates federal
21 jurisdiction over lawsuits in which "the matter in controversy exceeds the sum or
22 value of \$5,000,000, exclusive of interest and costs, and is a class action in which
23 . . . any member of a class of plaintiffs is a citizen of a State different from any
24 defendant," and involves a putative class that consists of more than 100 members.
25 28 U.S.C. §§ 1332(d)(2)(A) and (d)(5). Each of these three requirements is met.

26 THE PUTATIVE CLASS EXCEEDS 100 MEMBERS

27 5. While the Complaint does not specifically allege the number of
28 putative class members, Plaintiff defines the putative class to contain "all persons

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2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900

1 from whom [Wal-Mart] requested and recorded personal identification information
 2 in conjunction with a credit card transaction in California” (Complaint, ¶ 9).
 3 As set forth in the Declaration of John Drechny, Wal-Mart has processed
 4 significantly greater than 5,001 credit card transactions in California in the past
 5 year and those transactions correspond to more than 100 different consumers
 6 (Declaration of John Drechny, ¶ 5). Accordingly, the putative class consists of
 7 more than 100 members as required by CAFA.

8 THE AMOUNT IN CONTROVERSY EXCEEDS \$5,000,000

9 6. In *Korn v. Polo Ralph Lauren Corporation*, 536 F. Supp. 2d 1199,
 10 1202 (E.D. Cal. 2008), a class action alleging violations of § 1747.08, the
 11 complaint at issue alleged that the maximum statutory penalty per violation was
 12 \$1,000 but did not allege a total amount of damages. The court treated the
 13 complaint as having not alleged a specific amount in damages and stated that the
 14 removing defendant must show “by a preponderance of the evidence that the
 15 amount in controversy exceeds the statutory minimum (in this case, \$5,000,000 per
 16 the CAFA).” *Id.* at 1204 (citing *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d
 17 373, 376 (9th Cir. 1997)). The court held that the amount in controversy would be
 18 satisfied if the defendant could show that there were at least 5,001 putative class
 19 claims, which it did by submitting a declaration stating that it had processed more
 20 than 5,000 credit card transactions in California within one year prior to the
 21 litigation. *Id.* at 1205–06.

22 7. Here, although Wal-Mart denies all liability for claims alleged in the
 23 Complaint, the amount in controversy exceeds \$5,000,000. Wal-Mart has
 24 processed significantly greater than 5,001 credit card transactions in California in
 25 the past year (Declaration of John Drechny, ¶ 5). On behalf of herself and each
 26 putative class member, Plaintiff seeks an award of “the civil penalty to which he or
 27 she is entitled under California Civil Code section 1747.08(e)” (Complaint, Prayer
 28 for Relief ¶ 2), which, pursuant to the statute, is up to \$1,000 per violation

(Complaint, ¶ 32). With over 5,001 putative class claims, each subject to a penalty of up to \$1,000 as sought by Plaintiff, it is not possible that the amount in controversy could be less than \$5,000,000.¹ The amount in controversy requirement has therefore been met.

DIVERSITY OF CITIZENSHIP

8. Here, diversity of citizenship exists because Plaintiff is a citizen of the State of California and Wal-Mart is not. While Plaintiff seeks to avoid removal by alleging that Wal-Mart's principal place of business is California (Complaint, ¶ 10), such a claim is untenable. Wal-Mart's principal place of business is not California, and Wal-Mart was not incorporated under the laws of the State of California.²

9. In *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1186 (2010), the Supreme Court of the United States held that for purposes of diversity jurisdiction, a corporation's principal place of business must be where its "high level officers direct, control and coordinate the corporation's activities." Otherwise known as its "nerve center," the Court stated that the principal place of business would typically be a corporation's headquarters. *Id.* The Court definitively rejected other tests for determining the principal place of business of a corporation, such as the business activities test, in favor of having one straightforward rule: the principal place of business refers to the nerve center. *Id.* at 1192-94. Here, Wal-Mart's corporate

¹ Furthermore, the cases styled as *Grikavicius v. Wal-Mart Stores, Inc.*, Case Number CV 11-2314 DMG (PJWx), and *Landeros v. Wal-Mart Stores, Inc.*, Case Number CV 11-1635 DMG (PJWx), are currently pending in the Central District of California, and the case styled as *Bauer v. Wal-Mart Stores, Inc.*, Case Number 11CV0770-IEG (CAB), is currently pending in the Southern District of California. The plaintiffs in these cases allege a similar putative class and similar claims against Wal-Mart. The *Landeros* plaintiff specifically alleges more than \$5,000,000 in damages.

² Wal-Mart is incorporated under the laws of the State of Delaware (Declaration of John Drechny, ¶ 3).

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2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-228-9900

headquarters is located in Bentonville, Arkansas ("Arkansas Headquarters"), and includes many of its administrative and executive offices. (Declaration of John Drechny, ¶ 4). Wal-Mart's high ranking officers are principally located at the Arkansas Headquarters, and from there, they direct, control and coordinate most of the corporation's activities. (Declaration of John Drechny, ¶ 4). Furthermore, Wal-Mart's core executive and administrative functions, including without limitation, business forecasting and planning, and maintenance of much of Wal-Mart's electronic information, are carried out at the Arkansas Headquarters. (Declaration of John Drechny, ¶ 4). Thus, under *Hertz Corp.*, Wal-Mart's principal place of business is in Arkansas, not California.

10. Because the putative class exceeds 100 members, the amount in controversy exceeds \$5,000,000, and there is diversity of citizenship, removal is warranted under CAFA.

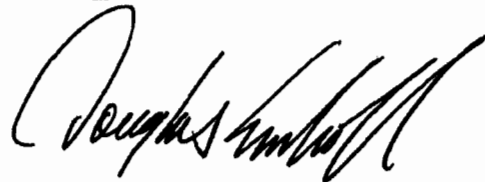
INTRADISTRICT ASSIGNMENT

11. Plaintiff commenced this action in the Superior Court of California for the County of San Francisco. Since this action arose in San Francisco County, pursuant to Northern District Local Rule 3-2(d), this action should be assigned to the San Francisco or Oakland division.

WHEREFORE, Defendants remove this action now pending in the Superior Court of the State of California, County of San Francisco, Case No. CGC-11-509011, to the United States District Court for the Northern District of California.

Dated: April 20, 2011

VENABLE LLP



By: _____
Douglas C. Emhoff
Attorneys for Defendant
Wal-Mart Stores, Inc.

4

EXHIBIT A

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NO. 1668 P. 2

ORIGINAL

1 James R. Patterson, State Bar No. 211102
 2 Matthew J. O'Connor, State Bar No. 203334
 3 HARRISON PATTERSON & O'CONNOR LLP
 4 402 West Broadway, 29th Floor
 5 San Diego, CA 92101
 6 Tel: (619) 756-6990
 7 Fax: (619) 756-6991

CC: [illegible]
 [illegible] - 3 [illegible]
 BY: [illegible]
 DEPUTY CLERK
 D. STEPPE

8 Attorneys for Plaintiff and the Class

9 SUPERIOR COURT OF CALIFORNIA

10 COUNTY OF SAN FRANCISCO

11 KIMBERLEY MAIN, an individual on
 12 behalf of herself and all others similarly
 13 situated,

14 Plaintiff,

15 vs.

16 WAL-MART STORES, INC., a Delaware
 17 corporation; and DOES 1 through 50, inclusive,

18 Defendants.

CASE NO.: CGC-11-509011

19 CLASS ACTION

20 CLASS ACTION COMPLAINT FOR:

- 21 (1) VIOLATIONS OF CALIFORNIA
 22 CIVIL CODE § 1747.08;
 23 (2) COMMON LAW NEGLIGENCE;
 24 (3) INVASION OF PRIVACY; AND
 25 (4) UNLAWFUL INTRUSION
 26 REQUEST FOR JURY TRIAL

27 FILE VIA FAX

28 Plaintiff Kimberley Main, on behalf of herself and all others similarly situated, complains and alleges upon information and belief based, among other things, upon the investigation made by Plaintiff by and through her attorneys, as follows:

29 I. INTRODUCTION

30 1. California Civil Code section 1747.08 generally states that when a merchant is engaged in a retail transaction with a customer, the merchant may neither (1) request personal identification information from a customer paying for goods with a credit card, and then record that personal identification information upon the credit card transaction form or otherwise; nor (2) require as a condition to accepting the credit card as payment the cardholder to provide the

-1-

CLASS ACTION COMPLAINT

HARRISON PATTERSON-O'CONNOR LLP
 402 West Broadway
 29th Floor
 San Diego, CA 92101

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NO. 1668 P. 3

HARRISON PATTERSON & O'CONNOR LLP
402 West Broadway
39th Floor
San Diego, CA 92101

1 customer's personal identification information which the retailer causes to be written, or
2 otherwise records upon the credit card transaction form or otherwise.¹

3 2. Defendant operates retail stores under the name Wal-Mart throughout the United
4 States, including California. Defendant is engaging in a pattern of unlawful and deceptive
5 business practices by utilizing an "Information Capture Policy" whereby Defendant's electronic
6 cash registers are programmed to require customers to input their personal identification
7 information, in the form of zip codes, into Defendant's electronic cash registers during credit card
8 transactions which are electronically recorded therein. Defendant's acts and practices as herein
9 alleged were at all times intentional.

10 3. On information and belief, Defendant uses the zip codes and additional
11 information obtained from its customers' credit cards, including names and credit card numbers
12 (or portions thereof) to obtain its customers' home addresses. Defendant obtains these addresses
13 with the help of third-party vendors such as Acxiom that maintain proprietary software and
14 databases containing hundreds of millions of individual consumers' contact information. For
15 example, Acxiom advertises its "Shopper Registration" software on its website claiming: "All
16 you have to do is capture the shopper's name from a check or a third-party credit card at the
17 point of sale and ask for the shopper's zip code and Address Append takes the name, combined
18 with the collected zip code, and matches them to Acxiom's [database]. Acxiom provides a
19 match rate report that tells you how many addresses were matched and appended."²

20 4. Defendant does not disclose its intentions to its customers, and instead relies on
21 the common misconception of consumers that Defendant is using the zip code information as a
22 security measure to verify cardholders' identities similar to "pay-at-the-pump" gas station

23 ¹ California Civil Code section 1747.08 states in relevant part:

24 "(a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation which accepts
credit cards for the transaction of business shall do either of the following:

25 (2) Request, or require as a condition to accepting the credit card as payment in full or in part for goods or services,
the cardholder to provide personal identification information, which the person, firm, partnership, association, or
26 corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card
transaction form or otherwise.

27 (b) For purposes of this section 'personal identification information,' means information concerning the cardholder,
other than information set forth on the credit card, and including, but not limited to, the cardholder's address and
telephone number."

28 ² See www.acxiom.com/SiteCollectionDocuments/website-resources/pdfs/Fact_Sheets/Fact_Sheet_IB_TS_Shopper_Recognition_200707.pdf. Acxiom is but one of numerous
third-party vendors that Defendant might use to obtain its customers' addresses.

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NO. 1668 P. 4

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29th Floor
San Diego, CA 92101

1 transactions where a zip code is required because there is no live clerk to verify identification.
2 Defendant, however, is not using zip codes as a security measure to verify cardholders' identities
3 during credit card transactions and the credit card companies do not require zip codes to
4 complete in-person "card present" credit card transactions.

5 5. Plaintiff does not seek any relief greater than or different from the relief sought
6 for the Class of which Plaintiff is a member. If successful, this action will enforce an important
7 right affecting the public interest and will confer a significant benefit, whether pecuniary or non-
8 pecuniary, on a large class of persons. Private enforcement is necessary and places a
9 disproportionate financial burden on Plaintiff in relation to Plaintiff's stake in the matter.

10 II. JURISDICTION AND VENUE

11 6. Plaintiff is informed and believes that Defendant's principal place of business is
12 in California. Defendant has accepted credit cards for the transaction of business throughout
13 California, including the County of San Francisco, which has caused both obligations and
14 liability of Defendant to arise in the County of San Francisco.

15 7. The amount in controversy exceeds the jurisdictional minimum of this Court.

16 III. THE PARTIES

17 A. Plaintiff

18 8. Plaintiff Kimberley Main (herein referred to as "Plaintiff") is a resident of
19 California, and entered into a retail transaction with Defendant at one of Defendant's California
20 stores located in California.

21 9. Plaintiff brings this class action against Defendant, pursuant to California Code of
22 Civil Procedure section 382, on behalf of herself and all persons from whom Defendant
23 requested and recorded personal identification information in conjunction with a credit card
24 transaction in California (the "Class"). Excluded from the Class are Defendant, its corporate
25 parents, subsidiaries and affiliates, officers and directors, any entity in which Defendant has a
26 controlling interest, and the legal representatives, successors or assigns of any such excluded
27 persons or entities.

28 ///

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NO. 1668 P. 5

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400 West Broadway
29th Floor
San Diego, CA 92101

1 B. Defendant

2 10. Defendant Wal-Mart Stores, Inc. (herein referred to as "Defendant"), is a
3 Delaware corporation. Plaintiff is informed and believes that Defendant's principal place of
4 business is in California. Defendant operates retail stores under the name Wal-Mart throughout
5 California, including stores in San Francisco County.

6 C. Does Defendants

7 11. Except as described herein, Plaintiff is ignorant of the true names of Defendants
8 sued as DOES 1 through 50, inclusive, and the nature of their wrongful conduct, and therefore
9 sues these DOE Defendants by such fictitious names. Plaintiff will seek leave of the Court to
10 amend this complaint to allege their true names and capacities when ascertained.

11 D. Agency/Aiding And Abetting

12 12. At all times herein mentioned, Defendants, and each of them, were an agent or
13 joint venturer of each of the other Defendants, and in doing the acts alleged herein, were acting
14 within the course and scope of such agency. Each Defendant had actual and/or constructive
15 knowledge of the acts of each of the other Defendants, and ratified, approved, joined in,
16 acquiesced and/or authorized the wrongful acts of each co-Defendant, and/or retained the
17 benefits of said wrongful acts.

18 13. Defendants, and each of them, aided and abetted, encouraged and rendered
19 substantial assistance to the other Defendants in breaching their obligations to Plaintiff and the
20 Class, as alleged herein. In taking action, as particularized herein, to aid and abet and
21 substantially assist the commissions of these wrongful acts and other wrongdoings complained
22 of, each of the Defendants acted with an awareness of his/its primary wrongdoing and realized
23 that his/her/its conduct would substantially assist the accomplishment of the wrongful conduct,
24 wrongful goals, and wrongdoing.

25 IV. CONDUCT GIVING RISE TO VIOLATIONS OF THE LAW

26 A. Plaintiff's Contact with Defendant

27 14. Within the last 12 months, Plaintiff went to Defendant's retail store located in
28 California.

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NO. 1668 P. 6

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402 West Broadway
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1 15. Plaintiff entered Defendant's store and proceeded to select a product from the
2 store that Plaintiff intended to purchase.

3 16. After selecting the item, Plaintiff proceeded to the cashiers' section of
4 Defendant's store to pay for the item selected through the use of a credit card.

5 17. After scanning Plaintiff's item, Defendant slid her credit card through Defendant's
6 electronic card reader, which subsequently requested personal identification information from
7 Plaintiff in the form of Plaintiff's zip code and without informing Plaintiff of the consequences if
8 Plaintiff did not provide Defendant's employee with Plaintiff's zip code.

9 18. Plaintiff, believing that she was required to provide her zip code to proceed and
10 complete the transaction inputted her zip code into Defendant's electronic credit card device.

11 19. At this point in the transaction, Defendant has Plaintiff's credit card number,
12 name and zip code recorded in its databases.

13 20. Defendant's employee made no attempt to erase, strikeout, eliminate, or otherwise
14 delete Plaintiff's personal identification information from the credit card device after Plaintiff's
15 credit card number was recorded.

16 21. Defendant's employee and Plaintiff completed the transaction and Plaintiff left
17 Defendant's store with her purchased items.

18 **V. PLAINTIFF'S CLASS ACTION ALLEGATIONS**

19 22. This lawsuit is brought on behalf of an ascertainable statewide class consisting of
20 all persons from whom Defendant requested and recorded personal identification information in
21 conjunction with a credit card transaction in California (the "Class"). Excluded from the Class
22 are Defendant, its corporate parents, subsidiaries and affiliates, officers and directors, any entity
23 in which Defendant has a controlling interest, and the legal representatives, successors or assigns
24 of any such excluded persons or entities.

25 23. The members of the Class are so numerous that joinder of all members is
26 impracticable. While the exact number of Class members is unknown to Plaintiff at this time,
27 such information can be ascertained through appropriate discovery, from records maintained by
28 Defendant and its agents.

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NO. 1668 P. 7

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402 West Broadway
29th Floor
San Diego, CA 92101

1 24. A class action is superior to other available methods for the fair and efficient
2 adjudication of this controversy because joinder of all members is impracticable, the likelihood
3 of individual Class members prosecuting separate claims is remote and individual Class
4 members do not have a significant interest in individually controlling the prosecution of separate
5 actions. Relief concerning Plaintiff's rights under the laws alleged herein and with respect to the
6 Class as a whole would be appropriate. Plaintiff knows of no difficulty to be encountered in the
7 management of this action which would preclude its maintenance as a class action.

8 25. There is a well-defined community of interest among the members of the Class
9 because common questions of law and fact predominate, Plaintiff's claims are typical of the
10 members of the Class, and Plaintiff can fairly and adequately represent the interests of the Class.

11 26. Common questions of law and fact exist as to all members of the Class and
12 predominate over any questions affecting solely individual members of the Class. Among the
13 questions of law and fact common to the Class are:

- 14 a. whether each Class member engaged in a credit card transaction with Defendant;
15 b. whether Defendant requested the cardholder to provide personal identification
16 information and recorded the personal identification of the cardholder, during credit card
17 transactions with Class members;
18 c. whether Defendant's conduct of requesting the cardholder to provide personal
19 identification information during credit card transactions and recording the personal
20 identification information of the cardholder constitutes violations of California Civil Code
21 section 1747.08; and
22 d. the proper amount of civil penalties to be awarded to Plaintiff and the Class.

23 27. Plaintiff's claims are typical of those of the other Class members because
24 Plaintiff, like every other Class member, was exposed to virtually identical conduct and is
25 entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation
26 pursuant to California Civil Code section 1747.08(e).

27 28. Plaintiff can fairly and adequately represent the interests of the Class, she has no
28 conflicts of interest with other Class members, and has retained counsel competent and

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NO. 1668 P. 8

1 experienced in class action and civil litigation.

2 **FIRST CAUSE OF ACTION FOR VIOLATIONS OF**
 3 **CALIFORNIA CIVIL CODE § 1747.08**
 4 **[SONG-BEVERLY CREDIT CARD ACT OF 1971]**

5 29. Plaintiff refers to and incorporates by reference as though set forth fully herein
 6 paragraphs 1 through 28 of this Complaint.

7 30. California Civil Code section 1747.08 prohibits any corporation, which accepts
 8 credit cards for the transaction of business, from requesting the cardholder to provide personal
 9 identification information which the corporation then records in conjunction with a credit card
 10 transaction.

11 31. Defendant is a corporation that accepts credit cards for the transaction of business.
 12 During credit card transactions entered into at Defendant's stores during the one-year period
 13 preceding the filing of this class action complaint through the present, Defendant utilized, and
 14 continues to utilize, an "Information Capture Policy" whereby Defendant's cashiers both request
 15 and record zip codes and credit card numbers from customers using credit cards at the point-of-
 16 sale in Defendant's retail establishments.

17 32. Due to Defendant's violations as set forth herein, Plaintiff and the Class are
 18 entitled to civil penalties in amounts of up to one thousand dollars (\$1,000) per violation
 19 pursuant to California Civil Code section 1747.08(e).

20 **SECOND CAUSE OF ACTION FOR NEGLIGENCE**

21 33. Plaintiff refers to and incorporates by reference as though set forth fully herein
 22 paragraphs 1 through 32 of this Complaint.

23 34. Defendant owed a duty of care to Plaintiff and the Class to reasonably protect
 24 their personal identification information, including their zip codes, home addresses and payment
 25 information, and to reasonably inform them of Defendant's intended use of their zip codes for
 26 purposes not related to the completion of their credit card transactions with Defendant.

27 35. Defendant negligently failed to take reasonable steps to protect Plaintiff's and the
 28 Class' personal identifying information and payment information from being collected, stored
 and used without Plaintiff's and the Class' knowledge or consent.

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NO. 1668 P. 9

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1 36. Defendant negligently failed to take affirmative steps to alert Plaintiff and the
2 Class of Defendant's intent to use their zip codes to obtain their home addresses and other private
3 information.

4 37. Defendant further negligently omitted to inform Plaintiff and the Class that it
5 would use their personal identification information for marketing, and that it would be sold or
6 otherwise disseminated to third parties.

7 38. On information and belief, Defendant also negligently failed to comply with third-
8 party vendor rules, which requires Defendant to have customers' informed consent prior to
9 sharing their personal identification information with the vendors, or using this information to
10 obtain their home addresses from the vendors' proprietary databases of information.

11 39. On information and belief, Defendant negligently shared Plaintiffs and the Class'
12 personal identification information, including their zip codes and home addresses, with other
13 vendors and retailers, and without authorization.

14 40. Defendant knew, or reasonably should have known that Plaintiff and the Class
15 would not have provided their zip codes to Defendant, or even entered into credit card
16 transactions with Defendant, had Plaintiff and the Class known that Defendant intended to use
17 their zip codes to obtain their home addresses, which would then be stored and shared with
18 others.

19 41. Defendant's conduct has caused Plaintiff and the Class to suffer damages by
20 having their personal identification information accessed, stored, and disseminated without their
21 knowledge or consent, and because they have been placed at serious risk for harassment, fraud,
22 and identity theft from anyone that has, or may obtain access to their personal identification
23 information, including their zip codes, home addresses, and billing information.

24 42. At the time of Defendant's representations and omissions, Plaintiff and the Class
25 did not know that they were false, and were ignorant of the omitted and/or concealed facts. In
26 reliance on these misrepresentations and without the benefit of the material omissions, Plaintiff
27 and the Class entered into credit card transactions with Defendant and provided Defendant with
28 their personal identification information.

MAR. 9. 2011 4:29PM A LEGAL SERVICE 6506974640

NO. 1668 P. 10

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1 43. Reliance on Defendant's representations and omissions was justified because
2 Plaintiff and the Class had no reason to believe that Defendant would use their zip codes to
3 obtain their private home addresses, that this information would be stored and used by
4 Defendant, or that it would be disseminated and shared with others.

5 44. Plaintiff and the Class have been damaged by Defendant's negligent
6 misrepresentations in an amount to be proven at trial.

7 45. On information and belief, Defendant received, and continue to receive
8 substantial revenue from the unauthorized use and sale of Plaintiff's and the Class' personal
9 identification information. This constitutes unjust enrichment for Defendant and must be
10 disgorged, and restored to Plaintiff and the Class.

11 **THIRD CAUSE OF ACTION FOR INVASION OF PRIVACY**

12 46. Plaintiff refers to and incorporates by reference as though set forth fully herein
13 paragraphs 1 through 45 of this Complaint.

14 47. The constitutionally guaranteed right of privacy unequivocally includes the right
15 to control the dissemination of one's private personal information, including one's home address.

16 48. Plaintiff and the Class have legally protectable privacy interests in their home
17 address information, and their ability to control the disclosure and dissemination of this
18 information.

19 49. Plaintiff and the Class had reasonable expectations that their private home
20 addresses would remain private when they entered into credit card transactions with Defendant.
21 They were certainly not aware that Defendant would use their names (captured from their credit
22 cards) and zip codes to obtain their private home addresses.

23 50. Defendant did not disclose their intention to use Plaintiff and the Class' zip codes
24 to obtain their home addresses, and instead requested Plaintiff and the Class' zip codes under the
25 guise of needing them for security purposes and to complete their credit card transactions.

26 51. Defendant's actions constitute a "serious" invasion of privacy in that Plaintiff and
27 the Class have had their private home addresses accessed, shared, and/or sold to others without
28 their knowledge or consent. In addition to the unwanted dissemination of their private

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NO. 1668 P. 11

1 information, Plaintiff and the Class have been placed at serious risk of harassment, fraud and
2 identity theft as a result of Defendant's conduct.

3 52. Plaintiff and the Class have been damaged by Defendant's conduct in an amount
4 to be proven at trial.

5 53. Unless and until enjoined, and restrained by order of this Court, Defendant's
6 wrongful conduct will continue to cause Plaintiff and the Class great and irreparable injury in
7 that their private personal information, including their home addresses and billing information
8 will remain at risk. Defendant will continue to use this unlawfully obtained information for their
9 own purposes and profit, it will be sold and/or disclosed to others, and it may be stolen and used
10 for identity theft and credit card fraud. Plaintiff and the Class have no adequate remedy at law
11 for the injuries in that a judgment for the monetary damages will not end the invasion of privacy.

12 **FOURTH CAUSE OF ACTION FOR UNLAWFUL INTRUSION**

13 54. Plaintiff refers to and incorporates by reference as though set forth fully herein
14 paragraphs 1 through 53 of this Complaint.

15 55. One who intentionally intrudes upon the solitude or seclusion of another or his
16 private affairs or concerns is subject to liability for invasion of privacy. The Supreme Court of
17 California instructs that the tort of intrusion is not limited to physical invasions, but also lies
18 where the defendant "obtained unwanted access to data about the plaintiff."

19 56. Plaintiff and the Class had reasonable expectations that their personal
20 identification information, including their private home addresses and billing information would
21 remain private when they entered into transactions with Defendant. They had no idea that
22 Defendant would use their zip codes to obtain their private home addresses, or that this
23 information would be stored and used for Defendant's profit, and/or sold to others. Defendant
24 did not disclose their intentions to use Plaintiff and the Class' zip codes to obtain their home
25 addresses, and instead relied on Plaintiff and the Class' false assumption that their zip codes were
26 a necessary security measure to process their credit card transactions.

27 57. The manner in which Defendant intruded upon Plaintiff and the Class' privacy
28 rights is highly offensive to a reasonable person.

MAR. 9. 2011

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NO. 1668 P. 12

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400 West Broadway
29th Floor
San Diego, CA 92101

58. As a proximate result of the above acts, Plaintiff and the Class' personal identification information was used by Defendant for their own profit, and to the detriment of Plaintiff and the Class, resulting in damages in the amount to be proven at trial.

59. Unless and until enjoined, and restrained by order of this Court, Defendant's wrongful conduct will continue to cause Plaintiff and the Class great and irreparable injury in that their private personal information, including their home addresses and billing information will remain at risk. Defendant will continue to use this unlawfully obtained information for their own purposes and profit, it will be sold and/or disclosed to others, and it may be stolen and used for identity theft and credit card fraud. Plaintiff and the Class have no adequate remedy at law for the injuries in that a judgment for the monetary damages will not end this unlawful intrusion.

VI. PRAYER FOR RELIEF

1. That the Court certifies this action as a class action appointing Plaintiff as the Class Representative and Plaintiff's counsel as Class counsel;

2. For an award to Plaintiff and to each member of the Class the civil penalty to which he or she is entitled under California Civil Code section 1747.08(e);

3. For general damages according to proof;

4. Restitution and disgorgement any ill-gotten profits from Defendant to the extent permitted by applicable law, together with interest thereon from the date of payment;

5. That the Court preliminarily and permanently enjoins Defendant from engaging in the conduct alleged herein;

6. Other injunctive and declaratory relief as may be appropriate;

7. For distribution of any moneys recovered on behalf of the Class of similarly situated consumers via fluid recovery or *cy pres* recovery where necessary to prevent Defendant from retaining the benefits of their wrongful conduct;

8. For an award of attorneys' fees as authorized by statute including, but not limited to, the provisions of California Code of Civil Procedure § 1021.5, and as authorized under the "common fund" doctrine;

9. For costs of the suit;

-11-

CLASS ACTION COMPLAINT

MAR. 9. 2011

4:29PM

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NO. 1668

P. 13

10. For prejudgment interest at the legal rate;
11. And for such other relief as the Court may deem proper.

Dated: March 9, 2011

HARRISON PATTERSON & O'CONNOR LLP

By:

James R. Patterson

Matthew J. O'Connor

Attorneys for Plaintiff and the Class

HARRISON PATTERSON & O'CONNOR LLP

404 West Broadway

25th Floor

San Diego, CA 92101

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is Venable LLP, 2049 Century Park East, Suite 2100, Los Angeles, California.

On **April 20, 2011**, I served the foregoing document(s) **NOTICE OF REMOVAL OF CIVIL ACTION** on the interested parties in this action addressed as follows:

JAMES R. PATTERSON

Attorneys for Plaintiff and the Class

MATTHEW J. O'CONNOR

HARRISON PATTERSON & O'CONNOR LLP

402 WEST BROADWAY, 29TH FLOOR

SAN DIEGO, CA 92101

Tel: (619) 756-6990

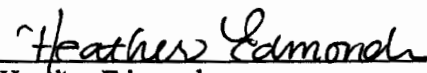
Fax: (619) 756-6991

☒ By placing true copies thereof enclosed in a sealed envelope(s) addressed as stated above.

☐ **BY MAIL (FRCP 5(b)(2)(C)):** I am readily familiar with the firm's practice of collection and processing correspondence for mailing with the U.S. Postal Service. Under that practice such envelope(s) is deposited with the U.S. postal service on the same day this declaration was executed, with postage thereon fully prepaid at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

☒ **BY OVERNIGHT DELIVERY (FRCP 5(b)(1)(F)):** I am readily familiar with the firm's practice of collection and processing items for delivery with Overnight Delivery. Under that practice such envelope(s) is deposited at a facility regularly maintained by Overnight Delivery or delivered to an authorized courier or driver authorized by Overnight Delivery to receive such envelope(s), on the same day this declaration was executed, with delivery fees fully provided for at 2049 Century Park East, Suite 2100, Los Angeles, California, in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on **April 20, 2011**, at Los Angeles, California.


Heather Edmonds

VENABLE LLP
2049 CENTURY PARK EAST, SUITE 2100
LOS ANGELES, CA 90067
310-229-9900